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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 513

GEORGE WEEMS WILLIAMS, RECEIVER OF THE WASHINGTON, BALTIMORE AND ANNAPOLIS ELECTRIC RAILROAD COMPANY,
Petitioner,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE,
Respondent.

No. 514

GEORGE WEEMS WILLIAMS, RECEIVER OF THE WASHINGTON, BALTIMORE AND ANNAPOLIS ELECTRIC RAILROAD COMPANY,
Petitioner,

vs.

MAYOR, COUNSELOR AND ALDERMEN OF THE CITY OF ANNAPOLIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

GEORGE WEEMS WILLIAMS,
WILLIAM L. RAWLS,
WILLIAM L. MARBURY, JR.,
Counsel for Receiver.

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TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

May It Please The Court:

The petition of George Weems Williams, Receiver of the Washington, Baltimore and Annapolis Electric Rail-

road Company, respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The purpose of this petition is to have this court review a decision of the United States Circuit Court of Appeals for the Fourth Circuit holding invalid an act of the General Assembly of Maryland passed at its session of 1931 exempting the railroad property of the Washington, Baltimore and Annapolis Electric Railroad Company from all state, county and city taxes and all charges in the nature of a tax for the years during which the said property should be used for railroad purposes, but not exceeding two years from January 1, 1931; the court holding the said act to be in violation of the Fourteenth Amendment to the Constitution of the United States, as well as of certain provisions of the Constitution of the State of Maryland.

The decision of the Circuit Court of Appeals for the Fourth Circuit is *against* the validity of the statute of the State of Maryland as being repugnant to the Constitution of the United States, and petitioner therefore has the right under paragraph (b) of Section 240 of the Judicial Code (U. S. Code, Title 28, Section 347) to bring the case to this Court for review by appeal. In that event, however, only the federal question is reviewable, and as the decision of the Circuit Court of Appeals is based also upon provisions of the Constitution of Maryland an appeal would be nugatory, and petitioner is compelled therefore to elect to proceed by petition for certiorari in order to make a review by this Court of any

avail to him, and this notwithstanding the fact that *the same principles* are necessarily involved in the construction of the relevant provisions of both the Federal and State Constitutions.

On January 27, 1931, petitioner was appointed receiver for the Washington, Baltimore and Annapolis Electric Railroad Company by the United States District Court for the District of Maryland. The General Assembly of Maryland was then in session. The railroad had not only failed to earn its fixed charges for the year 1930, but had actually failed to earn operating expenses to the extent of over $163,000, exclusive of taxes (R. 9).* The discontinuance of operation by the receiver of the railroad, which furnished the only rail service to the City of Annapolis, the capital of the State of Maryland where all of the government offices are located, was necessarily imminent. Under these circumstances the General Assembly passed the following act, it being Chapter 497 of the Acts of 1931 (R. 5-6):

CHAPTER 497.

AN ACT to exempt the railroad property of the Washington Baltimore and Annapolis Electric Railroad Company, or so much thereof as may be used for railroad purposes by said company, its receiver, successors and assigns, from all State taxes and charges, including contributions to the cost of construction of railroad crossings made or to be made under the authority of the State Roads Commission, and from all county and city taxes and charges in the nature of a tax for the years during which the property is so used, but not exceeding two years beginning January 1, 1931.

* The records are virtually identical in substance, but not in paging. References are to the Baltimore Case.

WHEREAS, The Washington, Baltimore and Annapolis Electric Railroad Company did not in the year 1930 earn its operating charges, and it is of the utmost importance for the welfare of the State and particularly the communities served by said railroad, that the operation of said railroad be continued, and

WHEREAS, It is in the judgment of the General Assembly of Maryland a wise and sound public policy to encourage the continued operation of said railroad by the exemption herein provided:

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the railroad property of the Washington, Baltimore and Annapolis Electric Railroad Company, or so much thereof as may be used for railroad purposes by said company, its receiver, successors and assigns, be exempt from all State taxes and charges, including contributions to the cost of construction of railroad crossings made or to be made under the authority of the State Roads Commission, and from all county and city taxes and charges in the nature of a tax for the years during which the property is so used, but not exceeding two years beginning January 1, 1931.

SEC. 2. *And be it further enacted,* that this Act shall take effect June 1, 1931.

Claim was filed in the receivership proceedings by respondent, Mayor and City Council of Baltimore, a municipal corporation of the State of Maryland, for certain taxes and charges amounting approximately to $50,000 per annum, respondent contending that the above act was invalid. Claim was likewise filed by respondent, Mayor, Counselor and Aldermen of the City of Annapolis for approximately $3,000 per annum, said claim being based likewise upon the asserted invalidity of the act.

The District Court (WILLIAM C. COLEMAN, J.) after hearing, delivered an opinion upholding the validity of the act and denying the claims for taxes just mentioned (R. 13). Upon appeal the Circuit Court of Appeals for the Fourth Circuit reversed the decision of the District Court and held the act in question invalid "as violative of the Fourteenth Amendment to the Federal Constitution, the uniformity provision of the Maryland Constitution, and Article 3, Section 33 of the Maryland Constitution which limits the power of the legislature in passing local or special laws" (R. 32).*

All of these conclusions were based on the fundamental assumption that no basis existed for the supposed discrimination involved in exempting from taxation the railroad property operated by the petitioner. It is this decision which petitioner now asks this Court to review.

B.

REASONS ASSIGNED IN SUPPORT OF PETITION

FIRST: The petitioner should have his writ, if for no other reason, because had he elected to proceed by appeal,

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* The provisions of the Maryland Constitution referred to read as follows:

Declaration of Rights, Article 15 [Bagby's Annotated Code (1924 ed.), p. 49]:

"* * * And all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or sub-class of improvements on land and personal property which the respecting taxing powers may have directed to be subject to the tax levy; * * *."

Constitution, Article III, Section 33 [Bagby's Annotated Code (1924 ed.), p. 93]:

"And the General Assembly shall pass no special law for any case for which provision has been made by an existing general law."

he could have obtained consideration by this Court of the only genuine questions of principle which are involved in this case. His election to file this petition is controlled by practical exigencies which should not bar him from obtaining consideration by this Court of constitutional issues of such importance as to fall within that narrow classification which may be brought before this Court as a matter of right.

SECOND: The decision of the Circuit Court of Appeals for the Fourth Circuit in striking down the legislative enactment of the State of Maryland, intended to promote the public convenience of its people by inducing and making possible the continued operation of an insolvent railroad, involves grave questions of constitutional law arising both under the Federal and State Constitutions and rests in determining these questions upon the proposition that the receiver of the railroad concerned was compelled to continue the operation of the railroad in any event, and there was thus no consideration to the State or basis in public policy for the exemption granted to the railroad property, a proposition which it is respectfully submitted is not sustainable in law.

Under the decisions of this Court, it is clear that an insolvent railroad which has failed to earn operating expenses on its entire system and has been forced into a receiver's hands can not be compelled to continue operations at the expense of creditors until the corpus is exhausted. *Brooks-Scanlon Co. v. R. R. Comm.*, 251 U. S. 396; *Bullock v. Florida*, 254 U. S. 513, 520; *Railroad Comm. v. Eastern Tex. R. R.*, 264 U. S. 79; *Colorado v.*

United States, 271 U. S. 153.* If the company has neither credit nor earning power then operations must cease as a matter of *physical necessity*. In any event the Legislature of Maryland desired to avoid the issues which would have been presented had the carrier instituted proceedings before the appropriate regulatory body, looking to the abandonment of operations. [U. S. Code, Title 49, Sec. 1, (18) (19). Code of Public General Laws of Maryland (Bagby's Edition, 1929 Supplement), Art. 23, Sec. 380; *Colorado v. United States, supra; Benson v. Public Service Commission*, 141 Md. 398].

THIRD: The court below struck down the act in question upon the ground that it worked a discrimination under the Fourteenth Amendment to the Federal Constitution and under the so-called uniformity provision of the State Constitution, by reason of failure to classify railroads in a similar situation with that of the railroad in question, although the record before the court failed to disclose any basis for the assumption *that there was in fact any other railroad* in the State of Maryland similarly situated or that there were any existing circumstances which would make discriminatory as to any other railroad corporation the granting of the exemption provided for in the act. The settled doctrine in this Court is that where a legislative act is before the court upon the bare terms of the act itself, any asserted unconstitutional discrimination must appear from such terms and cannot be presumed. *O'Gorman & Young v. Hartford Ins. Co.*, 282 U. S. 251, 257-258; *Wampler v. Lecompte*,

* In *Railroad Comm. v. Eastern Texas R. R., supra*, this Court said (p. 85):

"To compel it (the railroad company) to go on at a loss or to give up the salvage value would be to take its property without due process of law."

282 U. S. 172; *Lawrence v. State Tax Commission*, 286 U. S. 276; *Columbus & Greenv. Ry. Co. v. Miller*, 283 U. S. 96, 101.

FOURTH: The decision sought to be reviewed denies to the Legislature of the State the right to deal with the peculiar situation and circumstances of a particular railroad by legislative act or contract. In this case the railroad was not earning its operating expenses, was in the hands of a receiver of a federal court, and the suspension of its operation was inevitable unless its financial condition was changed. The act held invalid granted relief from taxation only upon railroad property and *for only so long* as such property was used for railroad purposes, the plain intent being to offer relief from taxation if the condition of the act were accepted by the continued operation of the railroad. For nearly two years this offer has been accepted and the railroad operated. Petitioner has earned a vested right to the relief offered, and his right flows from contract as determined by this Court in a long line of cases. *New Jersey v. Wilson*, 7 Cranch, 164; *Gordon v. Appeal Tax Court*, 3 Howard, 133; *Piqua Bank v. Knoop*, 16 Howard, 369; *Ohio Life & Trust Co. v. Debolt*, 16 Howard, 416; *Dodge v. Woolsey*, 18 Howard, 331; *McGee v. Mathis*, 4 Wallace, 143; *Home of the Friendless v. Rouse*, 8 Wall. 430, 438; *Wilmington R. R. v. Reed*, 13 Wall. 264, 267; *Tomlinson v. Branch*, 15 Wall. 460; *Charleston v. Branch*, 15 Wall. 470; *Tucker v. Ferguson*, 22 Wall. 527; *Hoge v. Richmond & Danville R. Co.*, 99 U. S. 348, 354, 355; *Mobile & Ohio R. R. Co. v. Tennessee*, 153 U. S. 486.

The effect of these decisions is that where a legislative act offers a tax exemption upon compliance with its con-

ditions a contract results upon such compliance protected against impairment by the contract clause of the Federal Constitution.

FIFTH: The decision of the court below is apparently in conflict with the views expressed by this Court in *Northern Central Ry. Co. v. Maryland*, 187 U. S. 258, and in the case of *Commissioners of Wicomico County v. Bancroft*, 203 U. S. 112. In those cases the validity of a tax exemption such as is involved in the present case, was assumed, and important constitutional questions considered on that assumption.

SIXTH: The decision of the Circuit Court of Appeals for the Fourth Circuit is in apparent conflict with the prior decision of the same court in *Wicomico County Commissioners v. Bancroft*, 135 Fed. 977 (reversed by this Court on other grounds in the above-cited case), involving substantially similar legislation. In that case the court said (p. 980):

> "There is a general inclination on the part of state legislatures to grant immunities to railroads and other corporations with the view of encouraging the development of the particular section of the country through which they are to be constructed. To undertake to build a short line of railroad in most sections of the country is a precarious one, to say the least of it, and, in the absence of aid by subscription or immunity from taxation, instances are very rare where individuals are willing to embark in such hazardous enterprises. In the present case the Legislature of Maryland seemed to adopt this policy, and in order to secure the construction of a road granted certain privileges, franchises and immunities to the Baltimore & Eastern Railroad Company for a period of 30 years; but it seems, with all the encouragement and aid which had been given this company, it was unable to stem the tide, and as a

result its property was sold under foreclosure, and was purchased by the Baltimore, Chesapeake & Atlantic Railway Company. That the Legislature had the power to exempt from taxation the Baltimore & Eastern Shore Railroad Company at the time it was incorporated is unquestioned, and, such being the case, it clearly had the right to provide by statute, as it did in this instance, the means by which the exemption from taxation granted to the Baltimore & Eastern Shore Railroad Company should be extended to any company which might undertake to rehabilitate such original corporation in the event of its becoming insolvent."

SEVENTH: The same fundamental error of law inheres in the decision which this Court is being asked to review with respect to both the application of the Fourteenth Amendment and the so-called uniformity clause of the Maryland Constitution, namely, that there was no consideration to the State or basis in public policy for the granting of the exemption. The so-called uniformity clause of the Maryland Constitution has existed in substantially its present form since the independence of the State, and in a number of decisions by the Court of Appeals of Maryland the granting of exemptions from taxation substantially similar to the one in question has been sustained. *Mayor & City Council of Baltimore v. B. & O. R. R.*, 6 Gill, 288; *The Tax Cases*, 12 G. & J. 117; *State v. B. & O. R. R.*, 48 Md. 49; *State v. B. & O. R. R.*, 127 Md. 434; *B. C. & A. Ry. Co. v. Wicomico County*, 103 Md. 277; *B. C. & A. Ry. Co. v. Ocean City*, 89 Md. 89; *B. C. & A. Ry. Co. v. Wicomico County*, 93 Md. 113; *Havre de Grace v. Bridge Co.*, 145 Md. 491.

See also:

Commissioners of Wicomico County v. Bancroft, 203 U. S. 112

The decision of the Circuit Court of Appeals admitted that under the Constitution of Maryland and under the decisions of the Court of Appeals of Maryland (the highest Court of the State) the General Assembly of Maryland had the constitutional power to provide for tax exemption in a special charter of a railroad corporation, and then sought to distinguish between the constitutional power to grant such an exemption and the power to grant a tax exemption to a railroad already built and in order to make possible its continued operation. There is no basis for such a distinction. In either case the basis for the exemption is railroad service. If a charter tax exemption provision does not violate the uniformity provisions of the State Constitution, it is clear that the other does not. This point was clearly stated by the District Court in the following language (R. 14):

> "I cannot distinguish between what has been done here and what I think it must be conceded, even by counsel for the two municipalities represented here, could be done *ab initio,* namely, if there were no railroad into Annapolis, the Legislature could make similar concessions or greater concessions if in its judgment such were desirable in the public interest in order to insure the construction and operation of such a road.
>
> Here the Legislature has said, by the very words of the Preamble of the law that the public interest demands the continuation of the Railroad. So I can not see any real legal distinction between agreeing to make it possible for the Railroad to continue to serve the public at these localities, and making it possible to start a railroad in the beginning to serve these localities."

The Circuit Court of Appeals in its decision disregards the Maryland cases above cited construing the

State Constitution, and relies upon the decision of the Court of Appeals of Maryland in the case of *Baltimore City v. Starr Church,* 106 Md. 281, which held invalid an act exempting from taxation certain property held *by a private corporation as an investment* and which amounted to a plain discrimination against all other taxpayers of the State, there being no relation to the public convenience nor foundation in public policy for the granting of such exemption. The decision in *Baltimore City v. Starr Church* does not deny the validity of an enactment intended to induce the continued operation of a railroad which renders important service to a large portion of the State and to thousands of its people.

EIGHTH: The decision of the court below in holding that the act in question is invalid as a special law under Section 33 of Article III of the Maryland Constitution is in conflict with the decisions of the Court of Appeals of Maryland interpreting that provision of its Constitution. Those decisions establish that the constitutional safeguard does not apply in a case where the absence of a reasonable basis for special treatment is not clearly shown.

Mayor, etc. of Baltimore v. United Railways, 126 Md. 39

Board of Police Commrs. v. McClenehan, 131 Md. 315.

NINTH: The decision of the court below in holding that the act under construction "has no application to the moneys due by the Railroad Company under the franchise ordinances" for the reason that said ordinances did not impose taxes or charges in the nature of a tax, dis-

regards the decision of the Court of Appeals of Maryland in the case of *United Railways Company v. Baltimore City,* 111 Md. 264, in which the precise contrary was held.

TENTH: The decision below is in conflict with many decisions above cited of the Court of Appeals of Maryland construing the State Constitution and should, therefore, be reversed by this Court following *Commissioners of Wicomico County v. Bancroft,* 203 U. S. 112.

ELEVENTH: The decision of the court below is one of grave importance to a large population as, if unreversed, it will probably necessitate the abandonment of the only rail service connecting the Cities of Washington and Baltimore with the City of Annapolis, which is the seat of the government of the State of Maryland. Furthermore, the decision involves principles which, because of present economic conditions, may prove of widespread application. If it be the law that the legislatures may not relieve railroad companies in financial distress such as confronts the railroad now being operated by the petitioner, of any part of the burden of taxation under which they are staggering, then that law should be declared by this Court and not by an inferior tribunal. This is particularly true where the questions involved are all of a type peculiarly suited to consideration by this Court, resting as they do on the same fundamental principles involved in the federal constitutional question presented by this case.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for

the Fourth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in said cases respectively entitled, Mayor and City Council of Baltimore, Appellant, vs. George Weems Williams, Receiver of the Washington, Baltimore and Annapolis Electric Railroad Company, Appellee, and Mayor, Counselor and Aldermen of the City of Annapolis, Appellant, vs. George Weems Williams, Receiver of the Washington, Baltimore and Annapolis Electric Railroad Company, Appellee, and that the said decision of the Circuit Court of Appeals for the Fourth Circuit and every part thereof may be reviewed by this Honorable Court, and that said judgment may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

GEORGE WEEMS WILLIAMS,
Receiver,

By GEORGE WEEMS WILLIAMS,
WILLIAM L. RAWLS,
WILLIAM L. MARBURY, JR.,
Counsel for Receiver.